

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

FILED

JUN 27 2008

William B. Guthrie
Clerk, U.S. District Court

By _____ Deputy Clerk

ALAN NOWLIN,

Petitioner,

v.

GREG PROVENCE, Warden,

Respondent.

Case No. CIV 04-228-RAW-KEW

OPINION AND ORDER

On August 16, 2007, the Magistrate Judge entered her Findings and Recommendation, which was affirmed and adopted on September 17, 2007. Petitioner filed a notice of intent to appeal on May 5, 2008, and on June 10, 2008, the Tenth Circuit Court of Appeals dismissed the appeal for lack of jurisdiction, because the notice of appeal was untimely. *Nowlin v. Provence*, No. 08-7044 (10th Cir. June 10, 2008). Petitioner has filed a motion to reopen time to file appeal, alleging his appeal was untimely through no fault of his own [Docket #36].

Petitioner alleges he was unaware of this court's September 17, 2007, order denying his habeas corpus petition, until his family contacted the Court Clerk's office in April 2008. When his family notified petitioner that his case had been dismissed, he filed his notice of intent to appeal on May 5, 2008. He has submitted an affidavit by Sally Wiggins, CSR III, stating that petitioner received no legal mail at his facility from this court from September 17, 2007, through April 30, 2008. He apparently is asking the court to reopen the time to file an appeal, pursuant to Fed. R. App. P. 4(a)(6), so he can proceed with a second appeal of this

habeas corpus action.

The court finds, however, that petitioner has completed his appeal, and there is no provision to reopen the time to file a second appeal for the same case. Furthermore, petitioner has not explained why he failed to file a motion to reopen the time to appeal when he discovered his habeas corpus petition had been dismissed. Accordingly, petitioner's motion to reopen time to file appeal [Docket #36] is DENIED.

IT IS SO ORDERED this 27 day of June 2008.


RONALD A. WHITE
UNITED STATES DISTRICT JUDGE